

**From:** Peter Nicklin  
**To:** Microsoft ATR  
**Date:** 1/26/02 5:40pm  
**Subject:** Microsoft Settlement

Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice  
601 D Street NW  
Suite 1200  
Washington, DC 20530-0001

Dear Ms Hesse,

The Proposed Final Judgment in the case of United States vs. Microsoft does NOT remedy Microsoft's monopolistic behavior. The settlement still allows Microsoft to continue its monopoly, destroying competing products by selling equivalent Microsoft products below cost, i.e. by bundling them in the Windows Operating System at no extra charge. For example, Microsoft now distributes Windows Media Player in Windows XP for free, thus stealing market from RealNetworks' Real Player and Apple Computer's QuickTime by using its exclusive Windows Operating System distribution channel.

The only cure for this behavior is to prevent Microsoft from:

- a) Selling products below cost.
- b) Using the Windows Operating System to distribute new products that compete with non-Microsoft products already established in the marketplace.

I recommend that if a non-Microsoft product has more than 20% market share, then it should be considered an "established product" in the marketplace, and Microsoft should not be allowed to bundle a competing product with the Windows Operating System.

I also recommend that new Microsoft products that compete with established non-Microsoft products should be developed and sold by a completely independent wholly-owned Microsoft subsidiary. The subsidiary would have no more access to Microsoft APIs and other proprietary information than other companies. Further, the subsidiary would not be allowed to enter into exclusive deals with Microsoft.

My recommendation for new products to be developed by a Microsoft subsidiary is a structural remedy but is much

easier to implement than breaking the company up.  
It would be easier to discover collusion between Microsoft  
and a subsidiary than by asking a 3-person technical  
committee to try and baby-sit Microsoft by monitoring  
compliance with the proposed final judgment.

Sincerely,

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